



OCTOBER 30, 2018

## **ATTACHMENT A**

# **ARTICLE 9: ADULT USE MARIJUANA FACILITIES**

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## **5.22 ADULT USE MARIJUANA FACILITIES**

### **5.22.1 PURPOSES.**

- a. To provide for the limited establishment of Adult Use Marijuana Facilities (collectively, known hereafter as Marijuana Facilities) in appropriate places for such use and under conditions in accordance with Chapter 334 of the Acts of 2016, entitled, “Regulation and Taxation of Marijuana Act,” as amended by Chapter 55 of the Acts of 2017, “An Act to Ensure Safe Access to Marijuana,” and all regulations which have or may be issued by the Department of Public Health (“DPH”) and the Cannabis Control Commission (“CCC”), including, but not limited to 935 CMR 500.00, *et seq.*
- b. To minimize the adverse impacts of Marijuana Facilities on adjacent properties, residential neighborhoods, schools, and other land uses potentially incompatible with Marijuana Facilities.
- c. To regulate the siting, design, placement, safety, monitoring, modification, and removal of Marijuana Facilities.

### **5.22.2 Applicability.**

- a. The commercial cultivation, production, processing, assembly, packaging, retail sale or wholesale, trade, distribution or dispensing of Marijuana for Adult Use is prohibited unless licensed by all applicable Massachusetts licensing authorities and permitted as a Marijuana Facility under this Bylaw.
- b. No Marijuana Facility shall be established except in compliance with the provisions set forth herein.
- c. If any provision of this Section or the application thereof to any person, establishment, or circumstance shall be held invalid, such invalidity shall not affect the other provisions or application of this Section and to this end the provisions of this Section are severable.

### **5.22.3 Administration.**

- a. The Board of Selectman shall be the Special Permit Granting Authority (SPGA) for an applicant for a Marijuana Facility.
- b. A Special Permit is required for Marijuana Facilities where indicated on 3.2 Schedule of Use Regulations under the Ashburnham Zoning By-Laws.

#### **5.22.4 Definitions.**

*Any term not specifically defined herein shall have the meaning as defined in 105 CMR 725.00 and 935 CMR 500.00 as such regulations may from time-to-time be amended.*

**Designated contact persons** – Any and all persons whose names appear on the Special Permit and Formal Site Plan Approval Applications as the applicant’s designee.

**Independent Testing Laboratory** - An entity licensed by the Commonwealth of Massachusetts to test marijuana and marijuana products.

**Locked Area** –An area equipped with locks or other security devices, which is accessible only to consumers 21 years of age or older, employees or owners of a Marijuana Facility or agents thereof, registered qualifying patients that are 18 years or older, or caregivers.

**Marijuana** – The same substance defined as “marihuana” or “marijuana” under G.L. c 94C and G.L. c 94G.

**Marijuana Cultivator** - An entity licensed to cultivate, process and package marijuana, and to transfer marijuana to other Marijuana Facilities, but not to consumers.

**Marijuana for Adult Use** – Marijuana that is regulated by 925 CMR 500.00 and cultivated, processed, manufactured, transported or sold for recreational purposes for individuals 21 years of age or older.

**Marijuana Facility** – A commercial marijuana cultivator, independent testing laboratory, product manufacturer, research facility, transporter, retailer, or any other type of licensed marijuana-related business, excluding a Marijuana Treatment Center.

**Marijuana Product Manufacturer** - An entity licensed to obtain, manufacture, process and package marijuana and marijuana products and to transfer these products to other Marijuana Facilities, but not to consumers.

**Marijuana Products** - Products that have been manufactured and contain marijuana or an extract from marijuana, including, but not limited to concentrated forms of marijuana and products composed of marijuana and other ingredients that are intended for use or consumption, including edible products, beverages, topical products, ointments, oils and tinctures.

**Marijuana Retailer** - An entity licensed to purchase and transport marijuana and marijuana products from Marijuana Facilities and to sell or otherwise transfer marijuana and marijuana products to Marijuana Facilities and to consumers.

**Non-Medical Marijuana**- Any marijuana that is NOT regulated by 105 CMR 725.00 and designated and restricted for use by, and for the benefit of, Qualifying Patients in the treatment of Debilitating Medical Conditions.

#### **5.22.5 Application Requirements for all Marijuana Facilities.**

- a. All Marijuana Facilities shall be subject to the application requirements set forth in the Town of Ashburnham's Zoning Bylaw, Section 5.10 Site Plan Review and Approval .
- b. In addition to the application requirements for Site Plan Review and Approval, a Special Permit for a Marijuana Facility shall be required, and the application for such Special Permit shall include the following additional information:
  - 1) A statement from the Applicant, setting forth the following:
    - (i) the name and address of each owner of the Facility;
    - (ii) the source of all marijuana that will be sold or distributed at the Marijuana Facility, if applicable;
    - (iii) the source of all marijuana that will be cultivated, processed, and/or packaged at the Marijuana Facility, if applicable;
    - (iv) the quantity of marijuana that will be cultivated, processed, packaged, sold and/or distributed at the Marijuana Facility;
    - (v) Plans must be approved by the Ashburnham Chief of Police and must show all proposed security measures for the Marijuana Facility, including lighting and alarms, to ensure the safety of persons and to protect the premises from theft;
    - (vi) Evidence that the Applicant has site control and the right to use the site for a facility, which evidence may take the form of a deed or valid purchase and sale agreement; or, in the case of a lease, a notarized statement from the property owner and a copy of the lease agreement;
    - (vii) A Management Plan that includes a description of all activities to occur on site, including all provisions for the delivery of marijuana and related products to and from the Marijuana Business;
  - 2) Additional documentation depending upon the type of organization:
    - (i) For a non-profit organization-- a copy of its Articles of Organization, a current Certificate of Legal Existence from the Secretary of the Commonwealth, and the most recent annual report;
    - (ii) For a for-profit corporate entity, a copy of its Articles of Incorporation or equivalent documents, a current Certificate of Legal Existence from the Secretary of the Commonwealth, and the most recent annual report.

- 3) Copies of all licenses issued by the CCC or DPH, and any materials submitted to these entities by the Applicant for purposes of seeking licensing;
- 4) A detailed floor plan of the premises of the proposed Marijuana Facility that identifies the square footage available and describes the functional areas of the facility; and
- 5) The resume(s) of the Applicant's principal(s), a company history, references, and relevant experience, where applicable.

#### **5.22.6 Use Requirements.**

- a. No marijuana shall be smoked, eaten, or otherwise consumed or ingested on the premises of any Marijuana Facility.
- b. Marijuana Facilities shall provide the SPGA and all abutters located within 500 feet of the Marijuana Facility with the name, phone number and email address of an on-site community relations staff person to whom one can provide notice if there are operating problems associated with the establishment.
- c. The hours of operation of Retail Marijuana Facilities shall be set by the SPGA.

#### **5.22.7 Location and Physical Requirements.**

- a. Eligible Locations for Marijuana Facilities
  - 1) Retail Marijuana Facilities be permitted in certain zoning districts as set forth in the Zoning Bylaw Article 3.2, Schedule of Use Regulations.
  - 2) Non-Retail Marijuana Facilities may be permitted in certain zoning districts as set forth in the Zoning Bylaw Article 3.2, Schedule of Use Regulations.
- b. All aspects of a Marijuana Facility relative to the acquisition, cultivation, possession, processing, sales, distribution, dispensing, or administration of marijuana, products containing marijuana, related supplies, or educational materials must take place at a fixed location within a fully enclosed building and shall not be visible from the exterior of the business.
- c. No outside storage of marijuana, related supplies, or educational materials is permitted.
- d. No Retail Marijuana Facility shall have a gross floor area accessible to patients or customers which is in excess of 2,500 square feet. Space which is dedicated to administration or operations and is accessible only to employees of the Retail Marijuana Facility shall not be included in this limitation.

- e. In the R-A and R-B Districts all Marijuana Facilities shall be subject to siting on a parcel no less than 5 acres. In addition, all Marijuana Facilities in the R-A and R-B districts shall be subject to a 100-foot setback from the street lines and property lines on the front, side and rear.
- f. All Marijuana Facilities shall provide adequate ventilation such that the application of pesticides shall be performed in compliance with G.L. c. 132B, *et seq.* and the regulations promulgated at 333 CMR 2.00 through 333 CMR 14.00.
- g. No use shall be allowed at a Marijuana Facility which creates a nuisance to abutters or to the surrounding area, or which creates any hazard, including but not limited to, fire, explosion, fumes, gas, smoke, odors, obnoxious dust, vapors, offensive sound or vibration, flashes, glare, objectionable effluent or electrical interference, which may impair the normal use and peaceful enjoyment of any property, structure or dwelling in the area.
- h. No Marijuana Facility shall be located within 500 feet of a pre-existing public or private school providing education in kindergarten or any of the grades one (1) through twelve (12), nor shall any such facility be located within 300 feet from a public park or playground. The distance shall be measured as set forth under 935 CMR 500.1110(3), in a straight line from the nearest point of the property line in question to the nearest point of the property line where the Marijuana Facility is or may be located.
- i. Natural or manmade features which in the opinion of the SPGA and the Planning Board provide equivalent separation may be substituted for the 500 feet buffer.
- j. No Marijuana Facility shall be located inside a building containing residential units, including transient housing such as motels and dormitories, or inside a movable or mobile structure such as a van or truck.
- k. Signage for Marijuana Facilities shall be subject to the Town of Ashburnham Zoning Bylaw Section 5.2 and the provisions for marketing set forth in 935 CMR 500.105 (4).

#### **5.22.8 Reporting Requirements.**

- a. All Permit holders for uses under this section shall provide the Police Department, Fire Department, Building Commissioner, Board of Health, Planning Board, and Special Permit Granting Authority with the names, phone numbers, mailing and email addresses of all management staff and key-holders, including a minimum of two (2) operators or managers of the facilities identified as designated contact persons to whom notice should be made if there are operating problems associated with any use under this section. All such contact information shall be updated as needed to keep it current and accurate.
- b. The designated contact persons shall notify the Police Department, Fire Department, Building Commissioner, Board of Health, Planning Board, and Special Permit Granting

Authority in writing a minimum of thirty (30) days prior to any change in ownership or management of a facility regulated under this section.

- c. All Marijuana Facilities shall file an annual report with the Permit Granting Authority and owner or operations manager for the Marijuana Facility shall appear before said Authority to present the report no later than January 31st of each year, providing a copy of all current applicable state licenses to demonstrate continued compliance with the conditions of the Permit.
- d. Within twenty-four hours of contact by a municipal official concerning the operation of a Marijuana Facility, the designated contact persons shall be required to respond by phone or email to any such inquiry.

#### **5.22.9 Transfer/Discontinuance of Use.**

- a. A Permit granted under this Section is non-transferable and shall have a term limited to the duration of the applicant's ownership or leasing of the premises as a Marijuana Facility.
- b. Any Marijuana Facility permitted under this section shall be required to remove all material, plants, equipment and other paraphernalia upon registration or licensure revocation, expiration, termination, relocation to a new site or any other cessation of operation as regulated by the CCC or DHP in compliance with applicable state regulations.

#### **5.22.10 Outside Consultants and Review Fees.**

Applicant's may be required to pay reasonable fees for the employment of outside consultants, which may include legal counsel. Said fees shall be deposited into a special account and shall be maintained and expended in accordance with the rules promulgated by the respective permit granting authority and the applicable law, G.L. c. 44, § 53G.

#### **5.22.11 Findings.**

- a. The SPGA shall not issue a permit for a Marijuana Facility unless it finds that:
  - 1) the Facility is designed to minimize any adverse visual impacts on abutters and other parties in interest, as defined in G.L. c. 40A, §11;
  - 2) the Facility has received a provisional certificate of registration or provisional license from the appropriate licensing authority and is in compliance with all applicable state laws and regulations;
  - 3) the applicant has provided a copy of a signed Host Agreement with the Town of Ashburnham, in accordance with G.L. c 94G, §3(d);

- 4) the applicant has provided adequate security measures to protect the health and safety of the public, and that the storage and/or location of cultivation of marijuana is adequately secured in an enclosed, locked area;
- 5) the applicant has adequately addressed issues of vehicular and pedestrian traffic, circulation, parking and queuing, especially during peak periods at the facility; and
- 6) a special permit (when required) had been granted.

#### **5.22.12 Violations.**

Any violation of this Section shall be determined by the Board of Selectmen and may include but not be limited to revocation of a permit issued under this Section.

and, to amend the Schedule of Use Regulations to add the following to 3.24:

<b>Special Uses</b>	<b>R-A</b>	<b>R-B</b>	<b>G-B</b>	<b>LI-A</b>	<b>LI-B</b>	<b>B</b>	<b>VC-C</b>	<b>VC-R</b>	<b>I</b>	<b>W</b>	<b>WSP</b>
g. Marijuana, Retail	N	N	SP	SP	SP	SP	N	N	N	N	N
h. Marijuana, Growing	SP	SP	SP	SP	SP	SP	N	N	SP	SP	SP
i. Marijuana, Processing	SP	SP	SP	SP	SP	SP	SP	N	SP	SP	SP
j. Marijuana, Testing	N	N	N	SP	SP	SP	SP	N	SP	SP	SP